

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1073
AND
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1477
96TH GENERAL ASSEMBLY

Reported from the Committee on Agriculture, Food Production and Outdoor Resources, April 19, 2012, with recommendation that the Senate Committee Substitute do pass.

4213S.04C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 142.031, 178.530, 256.400, 270.270, 270.400, 276.401, and 414.255, RSMo, and to enact in lieu thereof nine new sections relating to agriculture, with an existing penalty provision.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 142.031, 178.530, 256.400, 270.270, 270.400, 276.401, and 414.255, RSMo, are repealed and nine new sections enacted in lieu thereof, to be known as sections 142.031, 178.530, 256.400, 256.433, 262.795, 270.270, 270.400, 276.401, and 414.255, to read as follows:

142.031. 1. As used in this section the following terms shall mean:

(1) "Biodiesel", fuel as defined in ASTM Standard D-6751 or its subsequent standard specifications for biodiesel fuel (B100) blend stock for distillate fuels;

(2) "Missouri qualified biodiesel producer", a facility that produces biodiesel, is registered with the United States Environmental Protection Agency according to the requirements of 40 CFR 79, and:

(a) a. Is at least fifty-one percent owned by agricultural producers who are residents of this state and who are actively engaged in agricultural production for commercial purposes; or

b. At least eighty percent of the feedstock used by the facility originates

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

12 in the state of Missouri. For purposes of this section, "feedstock" means an
13 agricultural, horticultural, viticultural, vegetable, aquacultural, livestock,
14 forestry, or poultry product either in its natural or processed state; and

15 (b) Meets all of the following:

16 a. Has registered with the department of agriculture by September 1,
17 2007;

18 b. Has begun construction of the facility before November 1, 2007; and

19 c. Has begun production of biodiesel before March 1, 2009.

20 2. The "Missouri Qualified Biodiesel Producer Incentive Fund" is hereby
21 created and subject to appropriations shall be used to provide economic subsidies
22 to Missouri qualified biodiesel producers pursuant to this section.

23 The director of the department of agriculture shall administer the fund pursuant
24 to this section.

25 3. A Missouri qualified biodiesel producer shall be eligible for a monthly
26 grant from the fund provided that one hundred percent of the feedstock originates
27 in the United States. However, the director may waive the feedstock
28 requirements on a month-to-month basis if the facility provides verification that
29 adequate feedstock is not available. A Missouri qualified biodiesel producer shall
30 only be eligible for the grant for a total of sixty months unless such producers
31 during the sixty months fail, due to a lack of appropriations, to receive the full
32 amount from the fund for which the producers were eligible, in which case such
33 producers shall continue to be eligible [for up to twenty-four additional months
34 or] until they have received the maximum amount of funding for which such
35 producers were eligible during the original sixty-month time period. The amount
36 of the grant is determined by calculating the estimated gallons of qualified
37 biodiesel produced during the preceding month from feedstock, as certified by the
38 department of agriculture, and applying such figure to the per-gallon incentive
39 credit established in this subsection. Each Missouri qualified biodiesel producer
40 shall be eligible for a total grant in any fiscal year equal to thirty cents per gallon
41 for the first fifteen million gallons of qualified biodiesel produced from feedstock
42 in the fiscal year plus ten cents per gallon for the next fifteen million gallons of
43 qualified biodiesel produced from feedstock in the fiscal year. All such qualified
44 biodiesel produced by a Missouri qualified biodiesel producer in excess of thirty
45 million gallons shall not be applied to the computation of a grant pursuant to this
46 subsection. The department of agriculture shall pay all grants for a particular
47 month by the fifteenth day after receipt and approval of the application described

48 in subsection 4 of this section.

49 4. In order for a Missouri qualified biodiesel producer to obtain a grant
50 from the fund, an application for such funds shall be received no later than
51 fifteen days following the last day of the month for which the grant is
52 sought. The application shall include:

53 (1) The location of the Missouri qualified biodiesel producer;

54 (2) The average number of citizens of Missouri employed by the Missouri
55 qualified biodiesel producer in the preceding month, if applicable;

56 (3) The number of bushel equivalents of Missouri feedstock and
57 out-of-state feedstock used by the Missouri qualified biodiesel producer in the
58 production of biodiesel in the preceding month;

59 (4) The number of gallons of qualified biodiesel the producer manufactures
60 during the month for which the grant is applied;

61 (5) A copy of the qualified biodiesel producer license required pursuant
62 to subsection 5 of this section, name and address of surety company, and amount
63 of bond to be posted pursuant to subsection 5 of this section; and

64 (6) Any other information deemed necessary by the department of
65 agriculture to adequately ensure that such grants shall be made only to Missouri
66 qualified biodiesel producers.

67 5. The director of the department of agriculture, in consultation with the
68 department of revenue, shall promulgate rules and regulations necessary for the
69 administration of the provisions of this section.

70 6. Any rule or portion of a rule, as that term is defined in section 536.010,
71 that is created under the authority delegated in this section shall become effective
72 only if it complies with and is subject to all of the provisions of chapter 536 and,
73 if applicable, section 536.028. This section and chapter 536 are nonseverable and
74 if any of the powers vested with the general assembly pursuant to chapter 536 to
75 review, to delay the effective date or to disapprove and annul a rule are
76 subsequently held unconstitutional, then the grant of rulemaking authority and
77 any rule proposed or adopted after August 28, 2002, shall be invalid and void.

78 7. This section shall expire on December 31, 2009. However, Missouri
79 qualified biodiesel producers receiving any grants awarded prior to December 31,
80 2009, shall continue to be eligible for the remainder of the original sixty-month
81 time period under the same terms and conditions of this section unless such
82 producer during such sixty months failed, due to a lack of appropriations, to
83 receive the full amount from the fund for which he or she was eligible. In such

84 case, such producers shall continue to be eligible [for up to twenty-four additional
85 months or] until they have received the maximum amount of funding for which
86 they were eligible during the original sixty-month time period.

87 8. Any Missouri qualified biodiesel producer who receives any grant
88 payments under this section who subsequently sells the biodiesel facility shall be
89 subject to the following payback requirements:

90 (1) If such facility is sold within less than one year of the date of issuance
91 of the last grant payment, the Missouri qualified biodiesel producer shall pay the
92 state the amount of fifty percent of the total amount of grant payments received
93 under this section;

94 (2) If such facility is sold within one to two years of the date of issuance
95 of the last grant payment, the Missouri qualified biodiesel producer shall pay the
96 state the amount of forty percent of the total amount of grant payments received
97 under this section;

98 (3) If such facility is sold within two to three years of the date of issuance
99 of the last grant payment, the Missouri qualified biodiesel producer shall pay the
100 state the amount of thirty percent of the total amount of grant payments received
101 under this section;

102 (4) If such facility is sold within three to four years of the date of issuance
103 of the last grant payment, the Missouri qualified biodiesel producer shall pay the
104 state the amount of twenty percent of the total amount of grant payments
105 received under this section;

106 (5) If such facility is sold within four to five years of the date of issuance
107 of the last grant payment, the Missouri qualified biodiesel producer shall pay the
108 state the amount of ten percent of the total amount of grant payments received
109 under this section. If the sale date of the facility falls on a date that qualifies
110 under more than one subdivision of this subsection, the greater payback amount
111 shall apply. For purposes of this subsection, a facility shall be considered "sold"
112 when there is a change in at least fifty-one percent of the facility's ownership in
113 a transaction that involves a buyer or buyers and a seller or sellers.

178.530. 1. The state board of education shall establish standards and
2 annually inspect, as a basis for approval, all public prevocational, vocational
3 schools, Linn State Technical College, departments and classes receiving state or
4 federal moneys for giving training in agriculture, industrial, home economics and
5 commercial subjects and all schools, departments and classes receiving state or
6 federal moneys for the preparation of teachers and supervisors of such

7 subjects. The public prevocational and vocational schools, Linn State Technical
8 College, departments, and classes, and the training schools, departments and
9 classes are entitled to the state or federal moneys so long as they are approved
10 by the state board of education, as to site, plant, equipment, qualifications of
11 teachers, admission of pupils, courses of study and methods of instruction. All
12 disbursements of state or federal moneys for the benefit of the approved
13 prevocational and vocational schools, Linn State Technical College, departments
14 and classes shall be made semiannually. The school board of each approved
15 school or the governing body of Linn State Technical College shall file a report
16 with the state board of education at the times and in the form that the state
17 board requires. Upon receipt of a satisfactory report, the state board of education
18 shall certify to the commissioner of administration for his approval the amount
19 of the state and federal moneys due the school district or Linn State Technical
20 College. The amount due the school district shall be certified by the
21 commissioner of administration and proper warrant therefor shall be issued to
22 the district treasurer or Linn State Technical College.

23 **2. Notwithstanding the provisions of subsection 1 of this section,**
24 **the state board of education shall establish standards for agricultural**
25 **education that may be adopted by a private school accredited by an**
26 **agency recognized by the United States Department of Education as an**
27 **accreditor of private schools that wishes to provide quality vocational**
28 **programming outside the requirements of, but consistent with, the**
29 **federal vocational education act. Such standards shall be sufficient to**
30 **qualify a private school to apply to the state chapter for approval of a**
31 **local chapter of a federally chartered national agricultural education**
32 **association on a form developed for that purpose by the department of**
33 **elementary and secondary education without eligibility to receive state**
34 **or federal funding for agricultural vocational education. Any such**
35 **private school shall reimburse the department annually for the cost of**
36 **oversight and maintenance of the program.**

256.400. As used in sections 71.287 and 256.400 to [256.430] **256.433**,
2 unless the context clearly indicates otherwise, the following terms mean:

- 3 (1) "Department", the department of natural resources;
4 (2) "Director", the director of the department of natural resources;
5 (3) "Division", the division of geology and land survey of the department
6 of natural resources;

7 (4) "Major water user", any person, firm, corporation or the state of
8 Missouri, its agencies or corporations and any other political subdivision of this
9 state, their agencies or corporations, with a water source and equipment
10 necessary to withdraw or divert one hundred thousand gallons or more per day
11 from any stream, river, lake, well, spring or other water source;

12 (5) "State geologist", the director of the division of geology and land survey
13 of the department of natural resources;

14 (6) "Water source", any stream, river, lake, well, spring or other water
15 source.

256.433. Notwithstanding any provision of law to the contrary,
2 **no major water user shall convey water withdrawn or diverted from**
3 **within the Southeast Missouri Regional Water District created under**
4 **section 256.643 when such withdrawal or diversion and subsequent**
5 **conveyance to a location outside such district unduly interferes with**
6 **the reasonable and customary activities of a major water user**
7 **registered under section 256.410 located within such district. If such**
8 **conveyance occurs, the attorney general or the party or parties affected**
9 **may file an action for an injunction, however, in no case shall an**
10 **injunction be issued if the injunction would be detrimental to public**
11 **health or safety.**

262.795. Any law to the contrary notwithstanding, a child, as
2 **defined in subdivision (1) of section 294.011, may perform agriculture**
3 **work, as defined in subdivision (1) of section 290.500, on a farm owned**
4 **and operated by the child's parent, sibling, grandparent or sibling of a**
5 **parent or, if performed by the child with the knowledge and consent of**
6 **the child's parent, on any family farm, as defined in subdivision (4) of**
7 **section 350.010, or on any family farm corporation, as defined in**
8 **subdivision (5) of section 350.010, including work that would otherwise**
9 **be prohibited by subdivisions (1), (2), (3), (7), and (12) of section 294.040;**
10 **but no such child shall be permitted to engage in any other activities**
11 **prohibited by section 294.040. The term "parent", as used in this**
12 **section, shall have the same meaning as in subdivision (8) of section**
13 **294.011. Children engaged in work permitted by this section may do so**
14 **without obtaining a work certificate as required by section**
15 **294.024. Children engaged in work permitted by this section are not**
16 **subject to the limitations set out in section 294.030 and subsection 4 of**
17 **section 294.045.**

270.270. 1. Any person possessing or transporting live Russian or
2 [European wild boar] **Eurasian swine** or wild-caught swine on or through public
3 land without a Missouri department of agriculture permit is guilty of a class A
4 misdemeanor. Each violation of this subsection shall be a separate offense.

5 2. Any law enforcement officer, any agent of the conservation commission,
6 or the state veterinarian is authorized to enforce the provisions of this section,
7 section 270.260, and section 270.400.

270.400. 1. For purposes of this section, the term "feral hog" means any
2 hog, including Russian and [European wild boar] **Eurasian swine**, that is not
3 conspicuously identified by ear tags or other forms of identification and is
4 roaming freely upon public or private lands without the landowner's permission.

5 2. A person may kill a feral hog roaming freely upon such person's land
6 and shall not be liable to the owner of the hog for the loss of the hog.

7 3. Any person may take or kill a feral hog on public land or private land
8 with the consent of the landowner; except that, during the firearms deer and
9 turkey hunting season the regulations of the Missouri wildlife code shall
10 apply. Such person shall not be liable to the owner of the hog for the loss of such
11 hog.

12 4. No person except a landowner or such landowner's agent on such
13 landowner's property shall take, attempt to take, or kill a feral hog with the use
14 of an artificial light.

15 5. The director of the department of agriculture shall promulgate rules for
16 fencing and health standards for Russian and [European wild boar] **Eurasian**
17 **swine** and wild-caught swine held alive on private land. Any person holding
18 Russian or [European wild boar] **Eurasian swine** or wild-caught swine on
19 private land shall annually submit an application to the department for a
20 permit. Any applicant that successfully meets the requirements under this
21 section as determined by the department and pays an application fee shall be
22 issued a permit.

23 6. Russian and [European wild boar] **Eurasian swine** and wild-caught
24 swine may move only from a farm to a farm or directly to slaughter or to a
25 slaughter-only market. The department shall promulgate rules for exemption
26 permits and a fee structure to offset the actual and necessary costs incurred to
27 enforce the provisions of this section.

28 7. (1) There is hereby created in the state treasury the "Animal Health
29 Fund", which shall consist of all fees and administrative penalties collected by the

30 department of agriculture under this section and section 270.260. The state
31 treasurer shall be custodian of the fund. In accordance with sections 30.170 and
32 30.180, the state treasurer may approve disbursements. Upon appropriation,
33 moneys in the fund shall be used for the administration of this section and
34 section 270.260.

35 (2) Notwithstanding the provisions of section 33.080 to the contrary, any
36 moneys remaining in the fund at the end of the biennium shall not revert to the
37 credit of the general revenue fund.

38 (3) The state treasurer shall invest moneys in the fund in the same
39 manner as other funds are invested. Any interest and moneys earned on such
40 investments shall be credited to the fund.

41 8. Any person who violates subsection 2 of section 270.260 may, in
42 addition to the penalty imposed under section 270.260, be assessed an
43 administrative penalty of up to one thousand dollars per violation. Any person
44 who is assessed an administrative penalty under this section shall be notified in
45 writing of the right to appeal. Such person may request a hearing before the
46 director of the department of agriculture. Such request shall be made in writing
47 no later than thirty days after the date on which the person was notified of the
48 violation of section 270.260.

49 9. Any rule or portion of a rule, as that term is defined in section 536.010,
50 that is created under the authority delegated in this section shall become effective
51 only if it complies with and is subject to all of the provisions of chapter 536 and,
52 if applicable, section 536.028. This section and chapter 536 are nonseverable and
53 if any of the powers vested with the general assembly pursuant to chapter 536 to
54 review, to delay the effective date, or to disapprove and annul a rule are
55 subsequently held unconstitutional, then the grant of rulemaking authority and
56 any rule proposed or adopted after August 28, 2010, shall be invalid and void.

57 10. Nothing in this section shall be construed to apply to domestic swine.

276.401. 1. Sections 276.401 to 276.582 shall be known as the "Missouri
2 Grain Dealer Law".

3 2. The provisions of the Missouri grain dealer law shall apply to grain
4 purchases where title to the grain transfers from the seller to the buyer within
5 the state of Missouri.

6 3. Unless otherwise specified by contractual agreement, title shall be
7 deemed to pass to the buyer as follows:

8 (1) On freight on board (FOB) origin or freight on board (FOB) basing

9 point contracts, title transfers at time and place of shipment;

10 (2) On delivered contracts, when and where constructively placed, or
11 otherwise made available at buyer's original destination;

12 (3) On contracts involving in-store commodities, at the storing warehouse
13 and at the time of contracting or transfer, and/or mailing of documents, if
14 required, by certified mail, unless and to the extent warehouse tariff, warehouse
15 receipt and/or storage contract assumes the risk of loss and/or damage.

16 4. As used in sections 276.401 to 276.582, unless the context otherwise
17 requires, the following terms mean:

18 (1) "Auditor", a person appointed under sections 276.401 to 276.582 by the
19 director to assist in the administration of sections 276.401 to 276.582, and whose
20 duties include making inspections, audits and investigations authorized under
21 sections 276.401 to 276.582;

22 (2) "Authorized agent", any person who has the legal authority to act on
23 behalf of, or for the benefit of, another person;

24 (3) "Buyer", any person who buys or contracts to buy grain;

25 (4) "Certified public accountant", any person licensed as such under
26 chapter 326;

27 (5) "Claimant", any person who requests payment for grain sold by him
28 to a dealer, but who does not receive payment because the purchasing dealer fails
29 or refuses to make payment;

30 (6) "Credit sales contracts", a conditional grain sales contract wherein
31 payment and/or pricing of the grain is deferred to a later date. Credit sales
32 contracts include, but are not limited to, all contracts meeting the definition of
33 deferred payment contracts, and/or delayed price contracts;

34 (7) "Current assets", resources that are reasonably expected to be realized
35 in cash, sold, or consumed (prepaid items) within one year of the balance sheet
36 date;

37 (8) "Current liabilities", obligations reasonably expected to be liquidated
38 within one year and the liquidation of which is expected to require the use of
39 existing resources, properly classified as current assets, or the creation of
40 additional liabilities. Current liabilities include obligations that, by their terms,
41 are payable on demand unless the creditor has waived, in writing, the right to
42 demand payment within one year of the balance sheet date;

43 (9) "Deferred payment agreement", a conditional grain sales transaction
44 establishing an agreed upon price for the grain and delaying payment to an

45 agreed upon later date or time period. Ownership of the grain, and the right to
46 sell it, transfers from seller to buyer so long as the conditions specified in section
47 276.461 and section 411.325 are met;

48 (10) "Deferred pricing agreement", a conditional grain sales transaction
49 wherein no price has been established on the grain, the seller retains the right
50 to price the grain later at a mutually agreed upon method of price
51 determination. Deferred pricing agreements include, but are not limited to,
52 contracts commonly known as no price established contracts, price later contracts,
53 and basis contracts on which the purchase price is not established at or before
54 delivery of the grain. Ownership of the grain, and the right to sell it, transfers
55 from seller to buyer so long as the conditions specified in section 276.461 and
56 section 411.325 are met;

57 (11) "Delivery date" shall mean the date upon which the seller transfers
58 physical possession, or the right of physical possession, of the last unit of grain
59 in any given transaction;

60 (12) "Department", the Missouri department of agriculture;

61 (13) "Designated representative", an employee or official of the
62 department designated by the director to assist in the administration of sections
63 276.401 to 276.582;

64 (14) "Director", the director of the Missouri department of agriculture or
65 his designated representative;

66 (15) "Generally accepted accounting principles", the conventions, rules and
67 procedures necessary to define accepted accounting practice, which include broad
68 guidelines of general application as well as detailed practices and procedures
69 generally accepted by the accounting profession, and which have substantial
70 authoritative support from the American Institute of Certified Public
71 Accountants;

72 (16) "Grain", all grains for which the United States Department of
73 Agriculture has established standards under the United States Grain Standards
74 Act, Sections 71 to 87, Title 7, United States Code, and any other agricultural
75 commodity or seed prescribed by the director by regulation;

76 (17) "Grain dealer" or "dealer", any person engaged in the business of, or
77 as a part of his business participates in, buying grain where title to the grain
78 transfers from the seller to the buyer within the state of Missouri. "Grain dealer"
79 or "dealer" shall not be construed to mean or include:

80 (a) Any person or entity who is a member of a recognized board of trade

81 or futures exchange and whose trading in grain is limited solely to trading with
82 other members of a recognized board of trade or futures exchange; provided, that
83 grain purchases from a licensed warehouseman, farmer/producer or any other
84 individual or entity in a manner other than through the purchase of a grain
85 futures contract on a recognized board of trade or futures exchange shall be
86 subject to sections 276.401 to 276.582. Exempted herein are all futures
87 transactions;

88 (b) A producer or feeder of grain for livestock or poultry buying grain for
89 his own farming or feeding purposes who purchases grain exclusively from
90 licensed grain dealers or whose total grain purchases from producers during his
91 or her fiscal year do not exceed fifty thousand bushels;

92 (c) Any person or entity whose grain purchases in the state of Missouri
93 are made exclusively from licensed grain dealers;

94 (d) A manufacturer or processor of registered or unregistered feed whose
95 total grain purchases from producers during his or her fiscal year [does] **do** not
96 exceed [one hundred thousand dollars] **fifty thousand bushels** and who pays
97 for all grain purchases from producers at the time of physical transfer of the
98 grain from the seller or his or her agent to the buyer or his or her agent and
99 whose resale of such grain is solely in the form of manufactured or processed feed
100 or feed by-products or whole feed grains to be used by the purchaser thereof as
101 feed;

102 (18) "Grain transport vehicle", a truck, tractor-trailer unit, wagon, pup,
103 or any other vehicle or trailer used by a dealer, whether owned or leased by him,
104 to transport grain which he has purchased; except that, bulk or bagged feed
105 delivery trucks which are used principally for the purpose of hauling feed and any
106 trucks for which the licensed gross weight does not exceed twenty-four thousand
107 pounds shall not be construed to be a grain transport vehicle;

108 (19) "Insolvent" or "insolvency", (a) an excess of liabilities over assets or
109 (b) the inability of a person to meet his financial obligations as they come due, or
110 both (a) and (b);

111 (20) "Interested person", any person having a contractual or other
112 financial interest in grain sold to a dealer, licensed, or required to be licensed;

113 (21) "Location", any site other than the principal office where the grain
114 dealer engages in the business of purchasing grain;

115 (22) "Minimum price contract", a conditional grain sales transaction
116 establishing an agreed upon minimum price where the seller may participate in

117 subsequent price gain, if any. Ownership of the grain, and the right to sell it,
118 transfers from the seller to the buyer so long as the conditions specified in section
119 276.461 and section 411.325 are met;

120 (23) "Person", any individual, partnership, corporation, cooperative,
121 society, association, trustee, receiver, public body, political subdivision or any
122 other legal or commercial entity of any kind whatsoever, and any member, officer
123 or employee thereof;

124 (24) "Producer", any owner, tenant or operator of land who has an interest
125 in and receives all or any part of the proceeds from the sale of grain or livestock
126 produced thereon;

127 (25) "Purchase", to buy or contract to buy grain;

128 (26) "Sale", the passing of title from the seller to the buyer in
129 consideration of the payment or promise of payment of a certain price in money,
130 or its equivalent;

131 (27) "Value", any consideration sufficient to support a simple contract.

414.255. 1. This section shall be known and may be cited as the "Missouri
2 Renewable Fuel Standard Act".

3 2. For purposes of this section, the following terms shall mean:

4 (1) "Aviation fuel", any motor fuel specifically compounded for use in
5 reciprocating aircraft engines;

6 (2) "Distributor", a person who either produces, refines, blends,
7 compounds or manufactures motor fuel, imports motor fuel into a state or exports
8 motor fuel out of a state, or who is engaged in distribution of motor fuel;

9 (3) "Fuel ethanol-blended gasoline", a mixture of ninety percent gasoline
10 and ten percent fuel ethanol in which the fuel ethanol meets ASTM International
11 Specification D4806, as amended. The ten percent fuel ethanol portion may be
12 derived from any agricultural source;

13 (4) "Position holder", the person who holds the inventory position in motor
14 fuel in a terminal, as reflected on the records of the terminal operator. A person
15 holds the inventory position in motor fuel when that person has a contract with
16 the terminal operator for the use of storage facilities and terminating services for
17 motor fuel at the terminal. The term includes a terminal operator who owns
18 motor fuel in the terminal;

19 (5) "Premium gasoline", gasoline with an antiknock index number of
20 ninety-one or greater;

21 (6) "Price", the cost of the fuel ethanol plus fuel taxes and transportation

22 expenses less tax credits, if any; or the cost of the fuel ethanol-blended gasoline
23 plus fuel taxes and transportation expenses less tax credits, if any; or the cost of
24 the unblended gasoline plus fuel taxes and transportation expenses less tax
25 credits, if any;

26 (7) "Qualified terminal", a terminal that has been assigned a terminal
27 control number (tcn) by the Internal Revenue Service;

28 (8) "Supplier", a person that is:

29 (a) Registered or required to be registered pursuant to 26 U.S.C., Section
30 4101, for transactions in motor fuels in the bulk transfer/terminal distribution
31 system; and

32 (b) One or more of the following:

33 a. The position holder in a terminal or refinery in this state;

34 b. Imports motor fuel into this state from a foreign country;

35 c. Acquires motor fuel from a terminal or refinery in this state from a
36 position holder pursuant to either a two-party exchange or a qualified buy-sell
37 arrangement which is treated as an exchange and appears on the records of the
38 terminal operator; or

39 d. The position holder in a terminal or refinery outside this state with
40 respect to motor fuel which that person imports into this state. A terminal
41 operator shall not be considered a supplier based solely on the fact that the
42 terminal operator handles motor fuel consigned to it within a
43 terminal. "Supplier" also means a person that produces fuel grade alcohol or
44 alcohol-derivative substances in this state, produces fuel grade alcohol or
45 alcohol-derivative substances for import to this state into a terminal, or acquires
46 upon import by truck, rail car or barge into a terminal, fuel grade alcohol or
47 alcohol-derivative substances. "Supplier" includes a permissive supplier unless
48 specifically provided otherwise;

49 (9) "Terminal", a bulk storage and distribution facility which includes:

50 (a) For the purposes of motor fuel, is a qualified terminal;

51 (b) For the purposes of fuel grade alcohol, is supplied by truck, rail car,
52 boat, barge or pipeline and the products are removed at a rack; and

53 (10) "Unblended gasoline", gasoline that has not been blended with fuel
54 ethanol.

55 3. Except as otherwise provided under subsections 4 and 5 of this section,
56 on and after January 1, 2008, all gasoline sold or offered for sale in Missouri at
57 retail shall be fuel ethanol-blended gasoline.

58 4. If a distributor is unable to obtain fuel ethanol or fuel ethanol-blended
59 gasoline from a position holder or supplier at the terminal at the same or lower
60 price as unblended gasoline, then the purchase of unblended gasoline by the
61 distributor and the sale of the unblended gasoline at retail shall not be deemed
62 a violation of this section. The position holder, supplier, distributor, and ultimate
63 vendor shall, upon request, provide the required documentation regarding the
64 sales transaction and price of fuel ethanol, fuel ethanol-blended gasoline, and
65 unblended gasoline to the department of agriculture and the department of
66 revenue. All information obtained by the departments from such sources shall
67 be confidential and not disclosed except by court order or as otherwise provided
68 by law.

69 5. The following shall be exempt from the provisions of this section:

70 (1) Aviation fuel and automotive gasoline used in aircraft;

71 (2) Premium gasoline;

72 (3) E75-E85 fuel ethanol;

73 (4) Any specific exemptions declared by the United States Environmental
74 Protection Agency; and

75 (5) Bulk transfers between terminals. The director of the department of
76 agriculture may by rule exempt or rescind additional gasoline uses from the
77 requirements of this section. The governor may by executive order waive the
78 requirements of this section or any part thereof in part or in whole for all or any
79 portion of this state for reasons related to air quality. Any regional waiver shall
80 be issued and implemented in such a way as to minimize putting any region of
81 the state at a competitive advantage or disadvantage with any other region of the
82 state.

83 6. The provisions of section 414.152 shall apply for purposes of
84 enforcement of this section.

85 7. The department of agriculture is hereby authorized to promulgate rules
86 to ensure implementation of, and compliance and consistency with, this
87 section. Any rule or portion of a rule, as that term is defined in section 536.010,
88 that is created under the authority delegated in this section shall become effective
89 only if it complies with and is subject to all of the provisions of chapter 536 and,
90 if applicable, section 536.028. This section and chapter 536 are nonseverable and
91 if any of the powers vested with the general assembly pursuant to chapter 536 to
92 review, to delay the effective date, or to disapprove and annul a rule are
93 subsequently held unconstitutional, then the grant of rulemaking authority and

94 any rule proposed or adopted after August 28, 2006, shall be invalid and void.

95 8. All terminals in Missouri that sell gasoline shall offer for sale, in
96 cooperation with position holders and suppliers, fuel ethanol-blended gasoline,
97 fuel ethanol, and unblended gasoline. Terminals that only offer for sale federal
98 reformulated gasolines, in cooperation with position holders and suppliers, shall
99 not be required to offer for sale unblended gasoline.

100 9. Notwithstanding any other law to the contrary, all fuel retailers,
101 wholesalers, distributors, and marketers shall be allowed to purchase fuel ethanol
102 from any terminal, position holder, fuel ethanol producer, fuel ethanol wholesaler,
103 or supplier. In the event a court of competent jurisdiction finds that this
104 subsection does not apply to or improperly impairs existing contractual
105 relationships, then this subsection shall only apply to and impact future
106 contractual relationships.

107 **10. No refiner, supplier, wholesaler, distributor, or retail vendor**
108 **of fuel ethanol-blended gasoline that is in compliance with all**
109 **applicable state and federal laws and rules, including but not limited**
110 **to this chapter and chapters 407 and 413, shall be liable for any**
111 **damages related to a customer's purchase of fuel ethanol-blended**
112 **gasoline from the vendor. This subsection shall not be construed to**
113 **offer protection from liability in cases of negligence or intentional**
114 **misconduct or when the fuel ethanol-blended gasoline is selected by the**
115 **retail vendor or employee or agent of the retail vendor.**

116 **11. No refiner, supplier, wholesaler, distributor, or retail vendor**
117 **of gasoline blended with greater than ten percent ethanol that is in**
118 **compliance with all applicable state and federal laws and rules,**
119 **including but not limited to this chapter and chapters 407 and 413,**
120 **shall be liable for any damages related to a customer's purchase of**
121 **gasoline blended with greater than ten percent ethanol from the**
122 **vendor. This subsection shall not be construed to offer protection from**
123 **liability in cases of negligence or intentional misconduct or when the**
124 **gasoline blended with greater than ten percent ethanol is selected by**
125 **the retail vendor or employee or agent of the retail vendor.**

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